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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|----------------------|------------------|
| 10/054,038 | 11/12/2001 | Sunao Takatori | 35576/240964 | 1387 |
| 826 | 7590 | 10/04/2006 | EXAMINER | |
| ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000 | | | HALIYUR, VENKATESH N | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2616 | |

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,038

Applicant(s)

TAKATORI ET AL.

Examiner

Venkatesh Haliyur

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-6 are pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Joy et al [US Pat: 6,728,263].

Regarding claim 1, Joy et al in the invention of "Dynamic Sizing of Data Packets" disclosed a communication terminal device (**server, item 200 of Fig 2**) comprising: a packet unit (**packet size**) determining unit (**size selector, item 210 of Fig 2**) for determining a most appropriate packet unit for transmission data to be packetized (**col 5, lines 3-67**); and a packet generator (**Packetizer, item 208 of Fig 2**) for packetizing the transmission data based on a packet unit

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determined by said packet unit determining unit (**col 6, lines 1-48**) [**Figs 2, col 1, lines 55-67, col 2-lines 1-15, col 4, lines 44-67, col 5, lines 1-67, col 6, lines 1-48**].

Regarding claim 2, Joy et al disclosed a communication terminal device (**server, item 200 of Fig 2**), wherein said packet unit determining unit (**size selector, item 210 of Fig 2**) comprises means for determining the appropriate packet unit (**packet size**) based on packet units that can be transmitted by the communication terminal device (**col 5, lines 1-38**) and packet units that can be transmitted by a destination (**client, item 202 of Fig 2**) communication terminal device (**based on the type of connection at client side, col 6, lines 39-67, col 6, lines 1-23**).

Regarding claim 3, Joy et al disclosed a communication terminal device (**server, item 200 of Fig 2**) further comprising at least one of: means for transmitting a query (**server determines by monitoring and measuring the actual bandwidth of the client**) about packet units that can be transmitted by a destination communication terminal device to the destination communication terminal device and means for responding (**indicate to server**) to a query about packet units that can be transmitted by the communication terminal device from the destination communication terminal device (**Fig 2, col 5, lines 53-67, col 6, lines 5-48**);.

Regarding claim 4, Joy et al disclosed a communication terminal device (**server, item 200 of Fig 2**) further comprising: means for storing information

(item 22 of Fig 1) with respect to the packet units that can be recognized **(based on the type of connections to the client)** by the destination communication terminal device **(client, item 202 of Fig 2)** [Figs 1-3, col 4, lines 16-43, col 7, lines 6-67, col 8, lines 1-65].

Regarding claim 5, Joy et al disclosed a communication terminal device **(server, item 200 of Fig 2)** further comprising: means for, if a retransmission request occurs while packets are being transmitted, transmitting data subsequent to the retransmission request according a smaller packet unit **(client indicate a high bandwidth transmission)** [col 5, lines 29-67, col 6, lines 1-52].

4. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by Yanagidate et al [US Pub: US 2002/0099632].

Regarding claim 6, Yanagidate et al in the invention of "Method and system of Connecting an Internet" disclosed a billing device **(Bill charging device, item 30 of Fig 1, para 0039)** comprising: means for generating a billing file storing information for billing **(stores billing data, item 303 of Fig 2, para 0041)** which includes the type of a transmitted packet unit **(service class)**, the number of transmitted packets **(packet flow)**, and a packet communication rate **(minimum and maximum speed)**, with respect to an ID to be billed **(subscriber ID)**; and means for generating a charging file for the ID to be billed for a predetermined period **(bill-charging on traffic data provided for a particular subscriber having a valid subscriber ID from start to finish or contracted period)** [Figs 1-4, para 0039-0047, para 0055-0064].

Conclusion

5. Any inquiry concerning this communication or earlier communications should be directed to the attention to Venkatesh Haliyur whose phone number is 571-272-8616. The examiner can normally be reached on Monday-Friday from 9:00AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached @ (571)-272-3139. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600 or fax to 571-273-8300.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Venkatesh Haliyur

Patent Examiner

WV 09/25/06



RICKY Q. NGO
SUPERVISORY PATENT EXAMINER